

## Kentucky Supreme Court Rejects Challenge to Right to Work Law

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The Kentucky Supreme Court has rejected a challenge to Kentucky’s “right-to-work” law, holding the law does not violate the Kentucky Constitution. *Zuckerman v. Bevin*, Nos. 2018-SC-000097 and 2018-SC-000098 (Nov. 15, 2018).

### The Law

The “Kentucky Right to Work Act” went into effect on January 8, 2017. The Act amended Kentucky Revised Statutes 336.130(3) to provide that no employee is required to become, or remain, a member of a labor organization or to pay dues, fees, or assessments to a labor organization.

### The Challenge

Fred Zuckerman, President of Teamsters Local 89 in Louisville, Kentucky (and others), sued the state, alleging that the Act violated the Kentucky Constitution’s equal protection and takings clauses. Zuckerman also argued the Act was improperly labeled an emergency act, which allowed it to be passed quickly, and constituted unlawful “special legislation” under the Kentucky Constitution.

### Court Decision

In a 4-3 decision, the Court rejected each of Zuckerman’s arguments.

Addressing Zuckerman’s equal protection argument, the Court applied the “rational basis” test and found Kentucky’s interest in strengthening its economy and creating jobs provided sufficient justification for the law.

The Court also rejected Zuckerman’s argument that the law constituted an impermissible taking because it forced unions to represent employees who did not pay dues. The majority followed the U.S. Supreme Court’s decision in *Janus v. AFSCME Council 31*. (See our article, [Supreme Court Rules Unconstitutional Mandatory Fees Imposed on Non-Union, Public Sector Employees](#).) The Court noted that unions receive a significant benefit from being the exclusive representatives of entire bargaining units and therefore are not being required to perform services without compensation.

Finding that the Act was not “arbitrary and irrational legislation that favors the economic self-interest of the one or the few over that of the many,” the Court rejected Zuckerman’s claim that the law constituted the type of “special legislation” prohibited by Sections 59 and 60 of the Kentucky Constitution. It determined that the Act applied equally to all collective bargaining agreements entered into in the Commonwealth on or after the effective date of the Act and that there were rational, distinctive, and natural reasons for passing the law.

Finally, the Court rejected Zuckerman’s argument that the Act was illegally passed as emergency legislation. It held that the legislature was in a better position than the Court to address whether emergency legislation was appropriate and declined to disturb the Act.

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The Act made Kentucky the nation’s 27th right to work state, and it could have a wide-ranging impact on the labor movement in Kentucky.

Jackson Lewis attorneys are available to answer any questions employers may have regarding Kentucky’s right to work legislation and the Kentucky Supreme Court’s decision upholding the statute.

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